

FISCAL NOTE

Bill #: HB0666

Title: Revise sanitation in subdivisions act

Primary

Sponsor: Karl Ohs

Status: As introduced

Sponsor signature	Date	Dave Lewis, Budget Director	Date
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Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:		
General Fund	\$100,100	\$100,100
State Special Revenue	9,521	(98,219)
Revenue:		
State Special Revenue	(\$124,500)	(\$174,300)
Net Impact on General Fund Balance:	(\$100,100)	(\$100,100)

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
X		Significant Local Gov. Impact	X		Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

Department of Environmental Quality:

1. Three of the 15 counties currently under contract with the department to review minor subdivisions (five or fewer lots) pursuant to 76-4-104, MCA, will assume review authority as a local program as described in Section 2. These counties will assume final review authority for 300 minor subdivisions consisting of 600 lots and 20 major subdivisions totaling 500 lots. Workload reduction of 1.00 FTE
2. The department will be responsible for conducting complete subdivision reviews, including nonsignificance determinations required by the Water Quality Act, for an additional 750 minor subdivisions consisting of about 1,500 lots. This bill stipulates the department can no longer contract with counties for review of minor subdivisions. Workload increase of 3.00 FTE

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3. As a result, the department will need a net increase of 2.00 FTEs to conduct these reviews (1.5 FTE grade 15 water quality specialists and 0.50 FTE grade 9 administrative assistant). These positions will have to be filled, and the staff trained, at least two months prior to the effective date of the bill.
4. This bill creates several unfunded mandates (see Assumptions #5-#8). The following activities the department is required to perform are not funded under this bill: (a) review and approval of local programs including initial certification of local staff (Section 2); (b) annual reviews of local programs and ongoing certification of local staff (Section 2); (c) department support of and reimbursement to members of a technical advisory group (Section 5); and (d) conducting hearings on appeals of decisions by local programs (76-4-126).
5. An additional 0.17 FTE attorney and 0.25 FTE technical staff will be required in FY 2000 to conduct initial review and approval of local programs and initial certification of local staff. (Estimated total cost = \$23,600)
6. Annual reviews of local programs and certification of local staff will require 0.12 FTE in department technical staff. (Estimated total cost in FY 2001 = \$6,162)
7. Department support, travel and reimbursement costs for the technical advisory group will be \$10,000 in FY 2000 and \$6,000 in FY 2001.
8. Conducting hearings on an estimated three appeals of subdivision decisions by local programs will require 0.06 FTE attorney and 0.06 FTE of technical staff. (Estimated total cost each year = \$7,015)
9. Reimbursements to contracted counties (\$139,982 in FY 2000 (prorated) and \$219,929 in FY 2001) will cease after the effective date of the bill.
10. Revenue that the department will not receive for subdivisions reviewed by the three counties that establish local programs will be \$124,500 in FY 2000 and \$174,300 in FY 2001.

Department of Health and Human Services:

11. Food & Consumer Safety will continue to review and approve trailer court plans and specifications.
12. Approximately 1% of the trailer court cases will be in violation and require at least temporary closure for improvements. Based on experience, the cost of legal fees associated with each closure is approximately \$7,150, for a total of \$100,100.
13. Funding is general fund.

FISCAL IMPACT:

DEQ

	<u>FY2000</u>	<u>FY2001</u>
	<u>Difference</u>	<u>Difference</u>
FTE	2.50	2.30

Expenditures:

Personal Services	\$65,820	\$57,610
Operating Expenses	68,084	50,446
Benefits	15,599	13,654
Transfers	<u>(139,982)</u>	<u>(219,929)</u>
TOTAL	\$9,521	(\$98,219)

Funding:

State Special Revenue (02)	\$9,521	(\$98,219)
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Revenues:

State Special Revenue (02418)	(\$124,500)	(\$174,300)
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Net Impact to Fund Balance (Revenue minus Expenditure):

State Special Revenue (02418)	(\$134,021)	(\$76,081)
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DPHHS

Expenditures:

Operating Expenses	\$100,100	\$100,100
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Funding:

General Fund (01)	\$100,100	\$100,100
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

DEQ

1. The 12 counties that do not assume review authority will no longer receive reimbursements: about \$98,500 in FY 2000 and \$157,000 in FY 2001. In the three counties that assume complete review authority, reimbursements by the department will decrease by about \$41,000 in FY 2000 and \$63,000 in FY 2001. If the subdivision review fees in these counties are the same as the department's, their revenue for subdivision reviews will be about \$124,300 in FY 2000 and \$174,300 in FY 2001.

Department of Commerce / Community Development Bureau

2. Under the Montana Subdivision and Platting Act (sections 76-3-101 *et seq.*, MCA) county governments currently must consider all matters relating to the public health and safety when they review proposed subdivisions. This review assures potential lot purchasers that platted lots are suitable for development and protects owners of adjacent property and the community at large against developments that may be injurious to the public health and safety. One of the most important aspects of this review is whether an adequate supply of potable water will be available to the proposed subdivision and whether the land within the subdivision is suitable for environmentally safe disposal of sewage effluent.
3. The local public review process provided for by the Subdivision and Platting Act often brings to light information, known only to area residents or local officials, relating to the availability of water or physical constraints that may limit the effective use of individual sewage disposal systems. Physical limitations identified through this process sometimes necessitate a redesign of a proposed subdivision and, in extreme cases, may require that costly mitigation measures be taken or even render a site unusable for residential development.
4. The subdivision review process established by the Sanitation in Subdivisions Act (sections 76-4-101 *et seq.* MCA) does not provide for any public comment by owners of property adjacent to land proposed for subdivision or by other members of the community who may be aware of physical limitations which render the development inappropriate from the standpoint of water supply or sewage or solid waste disposal.
5. Under the Subdivision and Platting Act local governing bodies are authorized to review subdivisions creating lots of up to 160 acres to assure that water is reasonably available to each lot, and that each lot will provide a suitable location for an individual sewage disposal system. The Sanitation in Subdivisions Act, on the other hand, applies only lots containing less than 20 acres. Under HB666 neither prospective lot buyers, neighboring property owners, nor the general public would be protected, as they currently are under the Subdivision and Platting Act, against the health hazards and expense associated with the inappropriate development of lots containing more than 20 acres.
6. HB666 would deprive local governing bodies of the ability to consider any matter relating to the availability of domestic water or the suitability of lots in a subdivision for the installation of individual sewage systems unless the Department of Environmental Quality (DEQ) delegates its authority the governing body.

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7. Very few counties in Montana would likely have the financial resources necessary to assume the role of the DEQ in administering the Sanitation in Subdivision Act.

LONG-RANGE IMPACTS:

The number of counties with local programs may change through time with consequent effects on the DEQ revenue, workload and expenditures. It is not possible to estimate the fiscal impact of those changes.

TECHNICAL NOTES:

Department of Commerce:

1. Section 76-3-608(3)(a), MCA, of the Subdivision and Platting Act requires local governing bodies to review proposed subdivisions for their effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety. The availability to lot buyers of an adequate water supply and their ability to safely dispose of sewage and solid waste are matters that are inextricably linked to the review criteria of the act. However, except for those very few local governments that may have the financial resources to administer the Sanitation in Subdivision and Platting, HB666 would prohibit local government units from continuing to address these public health issues in reviewing subdivisions. In addition, HB666 would permit the creation and sale of subdivision lots larger 20 acres in size regardless of whether water is available to them or they are suitable for individual sewage disposal systems, potentially creating a threat to the health of the lot buyer or the general public.

DEQ:

2. The intent of the last sentence in Section 2 (6)(b) is unclear. In the context of (6)(b), it appears that the sentence is not necessary because, if the department revokes its approval of the local program, the limitations on local board of health authorities in Section 1 (1)(i)(ii) would be in effect. If the intent is to clarify that a local program may no longer review and approve subdivisions as authorized in Section 2, it appears that the phrase “local government for the approval of and installation of sewage disposal systems regulated under Title 76, chapter 4” should be “the local board of health, the board of county commissioners, or the governing body of the consolidated city-county government for the regulation of subdivisions under Title 76, chapter 4”.
3. The meaning of the first sentence in Section 14, 76-4-105 (1) is unclear. “The department or a local program may charge fees not to exceed actual costs for reviewing subdivisions *and for conducting inspections pursuant to 76-4-107 and 76-4-108.*” (*emphasis added*) 76-4-107 authorizes inspections while 76-4-108 authorizes enforcement of the act. To clarify, either the phrase “and enforcing this part” should be added or the reference to 76-4-108 should be deleted.